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No. 93-2086

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In the Supreme Court of the United States

OCTOBER TERM, 1994

VIGGO THOR BRANDT-ERICHSEN, PETITIONER

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

The Confirmation Statute, 43 U.S.C. 1165, provides that when a person claims title to public land under certain homestead Acts, including the now-repealed Alaska Act, the government is barred from contesting the claim "after the lapse of two years from the date of the issuance of the receipt * * * upon the final entry" of the land. The questions presented are:

1. Whether the court of appeals properly relied on *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), to sustain the Department of the Interior's interpretation of the Confirmation Statute, which holds that the two-year limitation period in that statute begins to run only after a claimant has satisfied all statutory requirements for obtaining title, including the tendering of the purchase price of the claimed land.

2. Whether petitioner has waived the argument that the two-year limitation period in the Confirmation Statute barred a proceeding by the Department contesting his claim to a tract of public land under the Alaska Act, because petitioner failed to raise that argument in the proceeding before the Department.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A17-A67) is reported at 999 F.2d 1376. The order of the district court (Pet. App. A1-A16) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 15, 1993. A petition for rehearing was denied on March 4, 1994. Pet. App. A68-A69. The petition for a writ of certiorari was filed on May 31, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Sometime in 1968, petitioner entered upon 80 acres of land in what is now the Wrangell-St. Elias National Park and Preserve in Alaska. Pet. App. A20. In August 1968, he filed with the Bureau of Land Management (BLM) within the Department of the Interior a notice that he was claiming the land under the Alaska Act. That Act, which was repealed in 1986, permitted a citizen to purchase, at $2.50 per acre, a site of up to 80 acres of public land in Alaska "for the purposes of trade, manufacture, or other productive industry." 43 U.S.C. 687a (1982), repealed effective October 21, 1986, by the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, Tit. VII, § 703(a), 90 Stat. 2789-2791. Petitioner's notice stated that he planned to set up a lumber business and a hunting lodge on the 80-acre site. When petitioner filed the notice, he paid the $10 recording fee required under 43 C.F.R. 2562.1(d) and was given a receipt for that payment. Pet. App. A20.

In August 1973, petitioner filed an application with BLM to purchase the 80-acre site. Pet. App. A20-A21. At the same time, he paid the $10 application fee required by 43 C.F.R. 2562.3(b) and was again given a receipt. At no time did petitioner tender the statutorily-mandated purchase price for the property, which was $200 (80 acres at $2.50 per acre). Pet. App. A22.

2. In January 1979, BLM filed an administrative complaint against petitioner contesting his application to purchase the 80-acre site. Pet. App. A21. BLM contended that petitioner had not shown that he was actually using the site for a productive industry, as required by the Alaska Act and its regulations. See 43 U.S.C. 687a-1 (1982) (application to purchase land must be accompanied by "the required proof or showing"); 43

C.F.R. 2562.3(d)(1) (application must show "[t]hat the land is actually used and occupied for the purpose of trade, manufacture or other productive industry * * *. A site for a prospective business cannot be acquired").

In December 1979, an administrative law judge cancelled petitioner's entry upon the site. *United States* v. *Viggo Thor Brandt-Erichsen*, 46 I.B.L.A. 243. The ALJ determined that BLM had made out a prima facie case of noncompliance with the requirements of the Alaska Act by showing that, during the five-year statutory prove-up period, see 43 U.S.C. 687a-1 (1982), petitioner's purported timber and rental operations had generated only "nominal" revenue. 46 I.B.L.A. at 251. The ALJ further determined that petitioner had not rebutted the government's showing by establishing that he could reasonably expect to profit from the operations. 46 I.B.L.A. at 250-252.

In March 1980, the Interior Board of Land Appeals (IBLA) affirmed the ALJ's determination. *United States* v. *Viggo Thor Brandt-Erichsen*, 46 I.B.L.A. 239. It concluded:

> [Petitioner] presents no evidence of an ongoing business, either lodging or sawmilling. Although [petitioner] belabors the issue, he effectively concedes * * * that his site was at most a preparation for a prospective business. That, however, is not sufficient under the authorities. The record herein is devoid of convincing evidence of a bona fide commercial enterprise, from which [petitioner] could reasonably hope to derive a profit.

Id. at 241 (citations omitted). Petitioner did not bring an action for judicial review of the IBLA's decision under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* See, *e.g.*, *Fallini* v. *Hodel*, 963 F.2d 275, 277 (9th Cir.

1992) ("[f]inal decisions of the IBLA are reviewed under the [APA]").

3. In May 1989, petitioner filed this action in the United States District Court for the District of Alaska claiming equitable title to the 80 acres of land and (in his amended complaint) invoking the Quiet Title Act, 28 U.S.C. 2409a, as a basis for his cause of action. In support of his claim, he argued for the first time that BLM's 1979 administrative complaint contesting his application to purchase the land was time-barred under the Confirmation Statute. That statute provides in relevant part (43 U.S.C. 1165):

> [A]fter the lapse of two years from the date of the issuance of the receipt of such officer as the Secretary of the Interior may designate upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered * * *.

Petitioner argued that the "date of the issuance of the receipt * * * upon the final entry" occurred in August 1973, when he received a receipt for the $10 application fee that he had submitted with his application to purchase the land. Under petitioner's theory, the two-year period prescribed in the Confirmation Statute therefore expired in August 1975, making BLM's 1979 administrative complaint untimely.[1]

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[1] In his complaint, petitioner also claimed that National Park Service regulations concerning the use of cabins on preserves in Alaska conflicted with the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 410hh *et seq.* That claim was severed and consolidated with another proceeding in which

On cross-motions for summary judgment, the district court rejected petitioner's reading of the Confirmation Statute and entered summary judgment for the government on petitioner's equitable title claim. Pet. App. A1-A16. The court concluded that the "receipt upon the final entry" to which the Confirmation Statute refers is "what is now called a manager's receipt within [BLM]," and is issued when the person who has applied to purchase land has satisfied the statutory requirements for obtaining title, which, under the Alaska Act, includes tendering the purchase price of the land. *Id.* at A7-A8. The court further concluded that petitioner "could have triggered operation of [the Confirmation Statute] by tendering the $200 [purchase price] and obtaining a receipt for it." *Id.* at A8. The court observed that its conclusion accords with general principles governing claims of equitable title, which require the claimant to "do[] all that he needs to do in order to be entitled to the passage of legal title," and which reject the notion that "a person could have equitable title to land * * * where he hadn't paid for it." *Id.* at A10-A11.

4. The court of appeals affirmed the award of summary judgment for the government on petitioner's equitable title claim. Pet. App. A17-A67. Judges Poole and Ferguson, who together constituted the majority, wrote separately to affirm the district court's decision.

Judge Poole began by observing that "Congress did not expressly define the phrase 'receipt upon [the] final

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the same regulations were at issue, *Alaska* v. *United States*, CV-87-00012-JAV (D. Alaska). The district court upheld the regulations; on appeal, the court of appeals vacated and remanded with instructions to dismiss for lack of jurisdiction. *Alaska* v. *National Parks & Conservation Ass'n*, 981 F.2d 1259 (9th Cir. 1992) (Table), cert. denied, 114 S. Ct. 72 (1993). Petitioner's ANILCA claim is not at issue here.

entry' as found in 43 U.S.C. § 1165." Pet. App. A28. After reviewing the text and history of the Confirmation Statute, he did not believe that "Congress' intent in using this phrase [was] clear." *Id.* at A29. He also reasoned that because the Confirmation Statute "is part of the acts that the Department of the Interior is charged with administering," *id.* at A36, citing 43 U.S.C. 1 and 1165 (historical notes), the Department's interpretation of the phrase must be upheld if it is "reasonable and not contrary to congressional intent," Pet. App. at A37, citing *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.11 (1984). He observed that the Department's interpretation has been established "[i]n a series of [IBLA] decisions" holding that "43 U.S.C. § 1165 is not triggered unless the entryman, in addition to fulfilling the other requirements for a patent application, has paid the entire purchase price for the land and received the final receipt." Pet. App. A34, citing *United States* v. *Jones*, 106 I.B.L.A. 230, 264 (1988); *United States* v. *Bunch*, 64 I.B.L.A. 318, 330 (1982), aff'd *sub nom. Bunch* v. *Kleppe*, Civ. No. A76-115 (D. Alaska Jan. 14, 1983); *United States* v. *Braniff*, 65 I.B.L.A. 94 (1982); *United States* v. *Boyd*, 39 I.B.L.A. 321, 328-329 (1979). Judge Poole concluded that the Department's interpretation is both reasonable and "in keeping with the congressional purpose of avoiding delays between the time the entryman completes the patent requirements and the agency adjudicates the final proof." Pet. App. A37-A38.

Judge Ferguson concurred in a separate opinion. Pet. App. A40-A49. He did not express disagreement with Judge Poole's *Chevron* analysis. He believed, however, that "[petitioner] has lost his right to assert that 43 U.S.C. § 1165 grants him equitable title because he failed to do so when he should have—a decade ago in an

administrative proceeding before the Department of the Interior." Pet. App. A41. Judge Ferguson also concluded that "[petitioner] can not rely on section 1165 because he has not shown he is in 'full compliance with the [Homestead] law,' which is required to trigger the running of section 1165's two-year statutory period." *Id.* at A43, quoting *Stockley* v. *United States*, 260 U.S. 532, 540 (1923) (bracketed text supplied by Judge Ferguson). Citing the IBLA's 1980 decision canceling petitioner's entry, Judge Ferguson explained that petitioner "failed to show that he was 'in possession of and occupying public lands . . . for the purposes of trade, manufacture, or other productive industry.'" Pet. App. A43-A44, quoting 43 U.S.C. 687a (1982).

Judge Hug dissented. Pet. App. A49-A67. He thought it "clear" from the text and history of 43 U.S.C. 1165 that "[petitioner] was not required to tender the purchase price of the land" in order to trigger the two-year limitation period in the Confirmation Statute. Pet. App. A53, A58. Judge Hug also believed that this case presented "exceptional circumstances" that justified excusing petitioner's failure to challenge the timeliness of the administrative proceeding contesting his claim at any point during that proceeding. *Id.* at A65.

ARGUMENT

The court of appeals correctly rejected this belated challenge by petitioner to the decision of the Department of the Interior rejecting his application to buy 80 acres of public land under the Alaska Act. Moreover, the decision below does not conflict with any decision of this Court or that of any other court of appeals. Furthermore, because only Judge Poole reached the issue of the proper interpretation of the Confirmation Statute, the majority below did not definitively resolve the issue of statutory

interpretation presented here. Finally, the repeal of the Alaska Act and the other homestead laws to which the Confirmation Statute refers makes the question of statutory interpretation presented here of steadily declining importance. Further review therefore is not warranted.

1. Petitioner contends (Pet. 8-15) that the court of appeals erred in relying on *Chevron* to uphold the Department of the Interior's interpretation of the two-year limitation period in the Confirmation Statute. In support of that contention, he argues (Pet. 8-11) that the Department's interpretation is foreclosed by the plain language of the statute, and (Pet. 11-15) that, even if the statute is ambiguous, the Department's interpretation is not entitled to deference under the *Chevron* doctrine. Neither argument has merit.

a. Petitioner bases his plain language argument exclusively on *Stockley* v. *United States*, 260 U.S. 532 (1923). See Pet. 9-11. He asserts that in *Stockley* "[t]his Court held the intent of Congress in enacting 43 U.S.C. § 1165 to be clear and unambiguous." Pet. 9. Petitioner's reliance on *Stockley* is misplaced.

Stockley concerned an earlier version of the Confirmation Statute than the one at issue here. The statute then provided that the government was barred from contesting a claim under various homestead laws "after the lapse of two years from the date of the issuance of the *receiver's* receipt upon the final entry." Act of Mar. 3, 1891, ch. 561, § 7, 26 Stat. 1099, quoted in *Stockley*, 260 U.S. at 538 (emphasis added). The "receiver[]" to which the statute referred was the government official to whom a homestead claimant submitted the application for the homestead and the required fees. See *Stockley*, 260 U.S. at 538-539; Pet. App. A29-A30. It was undisputed that Stockley had "complied with the provisions of the

Homestead laws, submitted final proof, * * * paid the commissions and fees then due, and * * * obtained the receiver's receipt therefor." *Stockley*, 260 U.S. at 536; see also *id.* at 544. The government argued, however, that the two-year limitation period in the Confirmation Statute had not begun to run—and thus did not bar an administrative proceeding to cancel Stockley's entry upon the claimed land that was commenced three years after he obtained the receiver's receipt—because he had not obtained a "certificate of the register," which was a separate document that was issued by a different official (the register) and that signified government approval of the application. *Id.* at 538-539; see Pet. App. A29-A30; Act of May 14, 1898, ch. 299, § 11, 30 Stat. 414.

The Court rejected the government's argument. The Court "assumed that Congress * * * knew the difference between a receiver's receipt and a register's certificate." *Stockley*, 260 U.S. at 538. The Court accordingly considered it dispositive that "Congress has plainly described the instrument from whose date the statute begins to run as the 'receipt upon the final entry.'" *Id.* at 540. Thus, the Court found "no ambiguity in this language" that would admit of the government's interpretation. *Id.* at 539.

As Judge Poole's opinion explained in this case (Pet. App. A31), 43 U.S.C. 1165 was revised in light of the creation of the BLM within the Department of the Interior by the 1946 Reorganization Plan No. 3, § 403, 60 Stat. 1100. The revision replaced the phrase "receiver's receipt upon the final entry" with the phrase "receipt of such officer as the Secretary of the Interior may designate upon the final entry." See Pet. App. A32, citing 43 U.S.C. 1165 (historical note). Under subsequent BLM regulations, the receiver and register were replaced by a BLM Manager, who "issued three different

'receipts' to an entryman as part of the process to obtain land under [the Alaska Act]." Pet. App. A33, citing 43 C.F.R. 1862.6. One receipt was issued after the entryman filed a notice of his claim and paid the $10 recording fee; a second receipt was issued after the entryman filed his application to purchase the claimed land and paid the $10 application fee; and the final receipt was issued after the entryman paid the purchase price. Pet. App. A33-A34.[2]

Contrary to petitioner's suggestion (Pet. 10-11), the court of appeals did not construe the revision of 43 U.S.C. 1165 as altering congressional intent. Instead, Judge Poole's opinion read the current 43 U.S.C. 1165, as petitioner does (Pet. 11), to "reflect the changed organization" of the agency responsible for administering the Alaska Act and other homestead statutes. See Pet. App. A31. Judge Poole's opinion correctly determined, however, that, in light of those changes, it is "at the least * * * unclear" what constitutes "receipt upon the final entry" for purposes of the Confirmation Statute. *Id.* at A32.[3]

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[2] BLM's current regulations no longer provide for the issuance of a final receipt. See 43 C.F.R. 2562.7. That does not affect the Department's view that the two-year period in the Confirmation Statute commences only when a claimant has satisfied all statutory requirements for obtaining title, which in the case of a claim under the Alaska Act includes the requirement of tendering the purchase price.

[3] Although petitioner describes *Stockley* as an "authoritative ruling on the issue of what receipt begins the two year period," Pet. 10, neither he nor the dissenting judge below ever identifies which of the two receipts that he obtained—the receipt for payment of the recording fee or the receipt for his payment of the application fee—must be treated under *Stockley* as triggering the two-year period. *Stockley* does not answer that question because, as explained in the text, the version of the Confirmation Statute

In sum, the present case involves a different version of 43 U.S.C. 1165, a different administrative process, and a different agency interpretation from those at issue in *Stockley*. Because of those differences, *Stockley* did not preclude the court of appeals from concluding that Congress had not "directly spoken to the precise question at issue" in this case, and accordingly deferring to the interpretation of the agency charged with administering the statute at issue. *Chevron*, 467 U.S. at 842; cf. *Lechmere, Inc.* v. *NLRB*, 112 S. Ct. 841, 847-848 (1992).

b. Petitioner errs in contending (Pet. 11-15) that the Department of the Interior lacks authority to interpret the Confirmation Statute. As the court of appeals explained, that statute "is part of the acts that the Department * * * is charged with administering." Pet. App. A36; accord *id.* at A64 (Hug, J., dissenting) ("the agency's interpretation of the statute is entitled to deference"); see also 43 U.S.C. 2 (instructing Secretary of the Interior to perform all duties "as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government"). Congress has granted the Department of the Interior "plenary authority over the administration of public lands," including "[t]he determination of the validity of claims against the public lands." *Best* v. *Humboldt Placer Mining Co.*, 371 U.S. 334, 336 (1963); see also *Steel* v. *Smelting Co.*, 106 U.S. 447, 450-451 (1882). Its inter-

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before the Court in *Stockley* specified that the "receiver's receipt" triggered the two-year period, and it was undisputed that Stockley had obtained a receiver's receipt. In contrast, the current statute does not refer to the "receiver's" receipt, and BLM no longer issues such a receipt.

pretation of 43 U.S.C. 1165 is therefore entitled to deference under *Chevron*.

Neither *Payne* v. *United States ex rel. Newton*, 255 U.S. 438 (1921), nor *Lane* v. *Hoglund*, 244 U.S. 174 (1917), is to the contrary, as petitioner asserts (Pet. 13, 17). In those cases, the Court upheld mandamus relief ordering the Secretary of the Interior to issue a patent to an entryman whose claim to a tract of public land had gone unchallenged for two years after issuance of a receiver's receipt. *Payne*, 255 U.S. at 444; *Lane*, 244 U.S. at 181. The Court in *Payne* stated that mandamus was appropriate because the effect of the expiration of the two-year limitation period in the Confirmation Statute was "to transfer from the land officers to the regular judicial tribunals the authority to deal with any subsequent controversy over the validity of the entry." *Payne*, 255 U.S. at 444. That statement indicated that, on the facts of that case, the Secretary had a non-discretionary duty under the statute to issue a patent. The statement does not indicate, as petitioner would have it (Pet. 13), that the Secretary lacks authority to interpret the statute.[4] Moreover, as petitioner admits (Pet. 16), the Department is often required to interpret the Confirmation Statute in adjudicating claims to public land. See, *e.g.*, *United States* v. *Jones*, 106 I.B.L.A. 230 (1988); *United States* v.

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[4] Petitioner's reliance on *Payne* and *Lane* is further undercut by the fact that in both cases the Court relied in part on administrative decisions of the Department of the Interior interpreting the Confirmation Statute. *Payne*, 255 U.S. at 443-444; *Lane*, 244 U.S. at 179-181.

Bunch, 64 I.B.L.A. 318 (1982), aff'd *sub nom. Bunch* v. *Kleppe*, Civ. No. A76-115 (D. Alaska Jan. 14, 1983).[5]

2. This Court "ha[s] recognized in more than a few decisions * * * [the] general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred

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[5] The courts below correctly concluded that it is reasonable for the Department to interpret the two-year limitation period in the Confirmation Statute as running from the date upon which the claimant of land has satisfied all of the requirements of the statute upon which the claim is based, including, in the case of a claim based on the Alaska Act, the tendering of the purchase price. As the district court observed, that interpretation accords with general principles regarding claims of equitable title, which require the claimant to have fulfilled all legal requirements for obtaining title. See Pet. App. A10-A11. It also accords with this Court's emphasis in *Stockley* that the claimant there was entitled to a patent because he had "done everything which the law required on his part" and made "payment of all that he was required to pay under the law." 260 U.S. at 539-540; see also *id.* at 541 (in prior version of 43 U.S.C. 1165, issuance of "receiver's receipt" triggered two-year limitation period because it signified "the end of compliance by [the claimant] with the requirements of law"); *Wyoming* v. *United States*, 255 U.S. 489, 501 (1921) (describing "settled law" that equitable title to public lands vests when a party has "complied with all the terms and conditions necessary to the securing of title"); *Benson Mining & Smelting Co.* v. *Alta Mining & Smelting Co.*, 145 U.S. 428, 432 (1892) (whenever "all the conditions of entry [have been] performed, the full equitable title has passed"); *Leonard* v. *Lennox*, 181 F. 760, 763 (8th Cir. 1910) ("To entitle one to a patent it is essential, among other things, that he comply with all the requirements of the statute under which he seeks the title and the authoritative regulations of the Land Department thereunder."); cf. *Grewell* v. *Watt*, 664 F.2d 1380, 1381 (9th Cir. 1982) (government contest to claim under Alaska Act was barred when initiated more than two years after claimant satisfied the requirements of the Act, including by tendering purchase price).

against objection made at the time appropriate under its practice." *United States* v. *L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 36-37 (1952); see also *Unemployment Compensation Comm'n* v. *Aragon*, 329 U.S. 143, 155 (1946); *Marathon Oil Co.* v. *United States*, 807 F.2d 759, 767-768 (9th Cir. 1986), cert. denied, 480 U.S. 940 (1987). Petitioner concedes (Pet. 16) that he did not object to the timeliness of the 1979 administrative proceeding contesting his claim at any time during that proceeding. He also concedes (*ibid.*) that the Department of the Interior has addressed objections based on the Confirmation Statute in "past agency decisions." Under those circumstances, petitioner waived his Confirmation Statute objection, as Judge Ferguson concluded in his concurring opinion. Pet. App. A44-A46.

Petitioner argues (Pet. 17-18) that his failure to raise his Confirmation Statute objection before the Department should be excused because the Department of the Interior lacks authority to interpret that statute. As we have explained, that argument is without merit. See pp. 11-12, *supra*.

Petitioner also argues (Pet. 18-21) that it would have been futile for him to assert his Confirmation Statute objection before the Department. Petitioner was required to raise that objection, however, even if the Department "had a predetermined policy on this subject which would have required it to overrule the objection if made." *L.A. Tucker Truck Lines, Inc.*, 344 U.S. at 37. Moreover, petitioner cannot establish that such a "predetermined policy" existed with regard to his Confirmation Statute objection in 1979 and 1980, when the administrative proceeding contesting his claim occurred. Of the four IBLA decisions cited by the court of appeals in support of the view that the Confirmation Statute's two-year period is triggered by payment or

tender of the purchase price, only one was issued prior to the 1980 termination of the administrative proceedings in this case. See Pet. App. A34-A36 (citing *United States* v. *Boyd*, 39 I.B.L.A. 321 (1979)); Pet. App. A46-A47 (Judge Ferguson notes that "three [of the four IBLA decisions], including the one with the most exhaustive discussion, were decided after the administrative proceedings in this case").[6]

3. Finally, the Alaska Act, 43 U.S.C. 687a (1982), the statute upon which petitioner's substantive claim to the 80 acres of land at issue in this case is based, was repealed along with other homestead laws effective October 21, 1986, by the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 703(a), 90 Stat. 2789-2791. Consequently, the number of cases in which individuals will assert claims such as petitioner's to equitable title under the Alaska Act or other homestead laws, whether based on the government's alleged failure to contest entry in a timely manner under the Confirmation Statute (as here) or on some other ground, will steadily diminish. Hence, even were petitioner's justifications for review by this Court otherwise compelling, and even were his claims properly preserved, the decreasing significance of the issues

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[6] Petitioner asserts (Pet. 21) that before 1982 "the agency disputed the application of section 1165 to land claims in Alaska," and therefore that "[i]n 1980 it would have been futile to ask the agency to apply section 1165 to an Alaska land claim" at all. However, as the IBLA's decision in *Boyd*, 39 I.B.L.A. at 328-329, shows, the Department of the Interior was reaching the merits of Confirmation Statute claims at least as early as 1979, notwithstanding any broader reservations it may have had about the applicability of that statute to land claims under the Alaska Act, 43 U.S.C. 687a (1982).

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presented by this case would counsel against further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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